

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: David A. Culp

Application No.: 10/736,925 Group No.: 3643

Filed: 12/16/2003 Examiner: Timothy D. Collins

Confirmation No.: 6903

For: Improved Apparatus and Method for Aerodynamic Wing

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

SUPPLEMENTAL DECLARATION

State of California §
 §
County of Contra Costa §

1. I, David A. Culp, state under penalty of perjury that the foregoing is true and correct.

2. This declaration incorporates by reference my prior declaration filed in this case on 19 September 2005 as if fully set forth herein, and is intended to supplement that testimony.

3. My previous testimony as to the first public display of the present invention was in error. The date of first public display was 17 December 2002, in Auckland, New Zealand, not 19 December 2002, as previously stated.

4. The present invention was not sold before 17 December 2002.

5. The present invention was not offered for sale before 17

December 2002.

6. Completion of open sea experimental testing of the present invention was conducted prior to 17 December 2002 by Kiteship™ and me for Oracle Racing, Inc. Open sea experimental testing of the present invention was conducted on the 22 of May, 2002 at approximately 34°19'42" N latitude by 119°43'46" W longitude; a place in the open Pacific Ocean approximately 5 miles south southwest of the seashore at the city of Santa Barbara, California, by KiteShip™, Oracle Racing, Inc., and me. Oracle Racing, Inc., Kiteship™, and I conducted these experimental tests at open sea, five miles or more from shoreline, on cloudy days or days when visibility was limited in order to hide the present invention from potential public view. The test kite was colored white, specifically to make it difficult or impossible to spot at a distance on a hazy day. Not only the results of this experimentation, but the fact of its existence, were kept a closely guarded secret by KiteShip™, Oracle Racing, Inc., and by me until December 17, 2002.

7. From May 2002 through November 2002 experimental testing involved scaling factors, material tests and control experimentation related to scaling the kite from 750 square feet to over 3000 square feet.

8. Oracle Racing, Inc., Kiteship™, and I conducted these experimental tests under agreed upon strict secrecy obligations

among these parities.

9. Kiteship™ and I kept records of this experimentation.

10. There was no commercial exploitation of the present invention during this experimentation.

11. Kiteship™ and I continually monitored the present invention during this experimentation.

12. This experimentation was necessary to evaluate the suitability of the present invention for offshore international sailcraft racing.

13. Kiteship™ and I retained control over the present invention during this experimentation.

14. This experimental testing was observed only by employees of Oracle Racing, Inc., and employees of KiteShip™ and me. No other vessels or aircraft were observed within 3 miles of the experiment at any time. During the testing care was exercised to fly the subject invention as close to the water as possible, to only fly a white colored kite and to otherwise take steps to mimic the look and feel of an ordinary spinnaker sail from a distance. A constant lookout was maintained for chance encounters with other vessels, overflights of aircraft and the like. We were prepared to douse and recover the instant invention should any vehicle or persons encroach closely enough to the experiment to potentially ascertain its true function, but this was not in fact necessary. We conducted the experiment on a

week day, again in order to minimize the likelihood of other vessels sailing in the vicinity.

15. The purpose and scope of this experimentation was to sail two identical yachts differing only in the type of spinnaker sail carried, on parallel and proximate courses in order to determine which exhibited faster speed. The experiment was carried out aboard two identical J105 yachts, a popular California racing class, both crewed by professional sailing crews in the employ of Oracle Racing, Inc., who were brought to the location at Oracle Racing's expense, and by employees of KiteShip™ Corp and by me. The yachts were on loan from their respective owners who agreed not know what the nature and scope of the experiment was, and who agreed not to be aboard the yachts during the experiment.

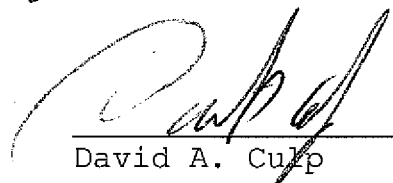
16. Attached to this declaration as Exhibits A-1, A-2, A-3, B-1 and B-2 and incorporated by reference are true and correct copies of various news reporting accounts of the first unveiling of the present invention on the Oracle America's Cup yacht on December 17, 2002, and subsequent public display on December 18, 2002. The reference by the CNN report cited by the Examiner and interpreted to be prior to December 17, 2002, is believed to be in error since the first public use of the present invention was December 17, 2002, in New Zealand.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED on March 21, 2006.



David A. Culp